

NOTIFICATION OF NATIONAL IMPLEMENTING LEGISLATION

Communication from the Netherlands with respect to Aruba

The following communication, dated 18 November 2004, is being circulated at the request of the Delegation of the Netherlands with respect to Aruba in accordance with the Committee Decision of 4 June 1996, relating to the procedures for the notification of national implementing legislation (GPA/1/Add.1).

RESPONSES TO THE CHECKLIST OF ISSUES

I. GENERAL ELEMENTS

1. *Has the Agreement been transposed into national law and/or does it apply directly?*

The "Agreement" has been converted to some extent into a State Decree Public Tenders S.P.G. 1996 No. 58 for working out Article 25 of the Accounting Ordinance S.P.G. 1989 No. 72. However, the conversion is not complete as on some points the State Decree Public Tenders has shortcomings and/or is not in line with the "Agreement". Aruba is in the process of introducing new legislation that will address these shortcomings.

2. *In the case that entities below the federal or central state level are covered: are these categories of entities autonomous from federal or central state level government in the implementation of the Agreement?*

This question is not applicable to state enterprises.

3. *In the case that Annex 3 entities are covered: are these categories of entities autonomous in the implementation of the Agreement or do they apply the legislation provided by the federal/central or sub-central level?*

The State Decree Public Tenders is applicable to state enterprises.

4. *Which main differences (if any) exist between the implementing laws at the federal or central level, the sub-central level and for Annex 3 entities?*

As far as is known, there are no differences between the regulations to be implemented.

5. *To what extent is information technology used in the process of government procurement?*

The application of "information technology" in public tenders is nil.

II. SPECIFIC ELEMENTS

6. *Identify the specific provisions in your legislation which reflect the national treatment and non-discrimination commitments of Article III of the Agreement.*

Provisions have been made in the State Decree Public Tenders for compliance with Article 3 of the "Agreement". Article 3, paragraph 2, letter h of the State Decree Public Tenders provides that the announcement must state all economic and technical requirements the bidders have to meet, irrespective of their composition and the services or products to be supplied, when making the bid and at the time of awarding the contract. Article 6, paragraph 1, letters g and h also indicate this. Furthermore, no distinction may be made pursuant to Article 4, paragraph 1, letters a and b between local and foreign bidders. Reasons are given for the above in Article 20, paragraphs 1, 2 and 3.

7. *Article IX:2 of the Agreement foresees that the invitation to participate may take the form of a notice of proposed procurement. If your implementing legislation provides for this opportunity, give details.*

All invitations for public tenders are regulated by Article 3 of the State Decree Public Tenders. Pursuant to Article 3, an announcement has to be made and the way in which this has to be done. Pursuant to Article 4, the announcement should also take place in the English language, if the cost of carrying out the work is estimated at an equivalent of 130,000 and 5,000,000 SDR or more for, respectively, the supply of goods and/or the rendering of services and for not being the supply of services and/or the rendering of services.

8. *Article IX: 3 of the Agreement foresees that entities at the sub-central level as well as Annex 3 entities may use a notice of planned procurement or a notice regarding a qualification system as an invitation to participate. If your implementing legislation provides for this opportunity, give details.*

No provisions have been made for this in the State Decree Public Tenders.

9. *In the case of selective tendering procedures: to what extent are entities allowed to use permanent lists of suppliers or is there a requirement for lists of suppliers to be selected on a contract-by-contract basis?*

A permanent list of suppliers is not available in the case of a private tender; a list of potential suppliers is drawn up in the case of a possible private tender.

10. *Article XIV of the Agreement allows for negotiation under certain conditions. Are entities allowed to proceed to negotiations? If so, which categories and what are the conditions imposed?*

Negotiations are not provided for by the State Decree Public Tenders.

11. *Article XI contains the time-limits for tendering and delivery. Time-limits shall normally be "not less than X days". Does the domestic legislation reflect the various minimum time-limits as set out in the Agreement? If not, give information on any longer time-limits which have been established.*

The period between the date of announcement and the date for filing a bid is at least 14 days. For realization costs equal to or exceeding 130,000 and 5,000,000 SDR (Article 4, paragraph 1), a period of 40 days is prescribed between the date of announcement and the date of filing a bid.

12. *To what extent does the implementing legislation allow entities, in pursuance of Article XII:1, to permit tenders to be submitted in several languages (one of which has to be a language of the WTO)? To what extent do entities use this flexibility?*

Article 4, paragraph 2, letters a and b prescribe that, pursuant to Article 4, paragraph 1, the announcement also has to be made in the English language and that the bid may always be made in the English language as well, if the specification bidding allows this. This is applied when one expects foreign bidders.

III. CHALLENGE PROCEDURES - ARTICLE XX

13. *Paragraph 3 of Article XX requires each Party to provide its challenge procedures in writing and make them generally available. Please provide this information.*

As far as is known, there are no specific procedures for processing objections against acting in violation of the "Agreement" or the State Decree Public Tenders. The only ways available for this are the possibilities provided by the prevailing legislation and regulations, appeal to the Court of First Instance.

14. *To the extent that this information does not fully respond to the following points, please provide the supplementary information necessary to do so.*

- (i) *The time-limit to launch a complaint contained in the Agreement is "not less than 10 days". What are the limits in domestic legislation?*
- (ii) *What body is responsible for the challenge procedures? Is this a "court" or an "impartial and independent Review Body"? If the latter:*
 - *How are its members selected?*
 - *Are its decisions subject to judicial review?*
 - *If not, how are the requirements of paragraph 6 of Article XX taken into account?*
- (iii) *What is the applicable law by reference to which the challenge body will examine complaints?*
- (iv) *Which rapid interim measures are provided to correct breaches of the Agreement and to preserve commercial opportunities?*
 - *Do these measures include the possibility to suspend the procurement process? On what conditions?*
- (v) *How do challenge procedures provide for correction of the Agreement? What type of compensation for loss or damages suffered can the challenge body order?*
- (vi) *Give any available information on the time-periods for the stages of the challenge process, including to obtain interim measures and a final decision.*
- (vii) *What are the usual costs to conduct a challenge procedure? Are there possibilities foreseen to do so free of charge?*

No information received.
